

[ADMINISTRATIVE ORDER NO. 60, March 13, 1999]

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE
WITH FORFEITURE OF ALL BENEFITS UNDER THE LAW ON
TACLOBAN CITY FIRST ASSISTANT PROSECUTOR LEO C. TABAO**

This is an administrative complaint initiated by former Assistant City Prosecutor Emmanuel B. Gerez against First Assistant City Prosecutor Leo C. Tabao, both of Tacloban City, for dishonesty, gross negligence, dereliction of duty, and conduct unbecoming of a public officer.

In his sworn-complaint dated October 15, 1993, complainant alleges the following:

1. respondent committed gross negligence for failing to appear, despite due notice, in the scheduled hearing on September 3, 1993 of Criminal Case No. 93-06-352 (People v. Ballais, et al.), for violation of Section 4, Article 2 of Republic Act (RA) No. 6425, resulting in the dismissal of the case; resting Criminal Case No. 92-05-191 (People v. Fabi, et al.), for violation of Presidential Decree No. 705, albeit identity of the persons accused had not been sufficiently established, despite existence of several witnesses listed in the information, leading to the dismissal of the complaint; and continuing to appear in the prosecution of Criminal Case No. 93-05-287 (People v. Peñaranda), for violation of Sec. 4, Art II of RA 6425, although he had previously inhibited himself therefrom, thus bungling the prosecution's evidence leading to the acquittal of the accused;
2. respondent committed dishonesty when he stated in his certificate of service that he rendered full-time service for the month of April 1993 despite his absence from court duty in the entire morning of April 27, 1993; and
3. respondent likewise committed conduct unbecoming of a public officer in placing the letters S--T, which conveys no other meaning than the term "SHIT", in the "Opposition to the Formal Offer of Exhibits for the Prosecution" filed in the case of People v. Pelaez pending before Branch 2, Metropolitan Trial Court of Tacloban City.

Responding, Tabao denied being negligent in handling the criminal cases in question. While admitting that he was absent in the morning of April 27, 1993 and that he stated in his certificate of service that he rendered full-time service for that month, he alleged that the charge of dishonesty is frivolous as a leave of absence is not required for a half-day absence. He also maintained that if ever he wrote "s--t" on his file copy of the subject pleading, such is not the concern of others, including complainant.

Finding respondent's explanation to be unsatisfactory, the Department of Justice (DOJ) formally charged Tabao for the aforestated offenses.

By way of answer, respondent submitted photocopies of his formal transmittal letter dated January 10, 1994, regarding his formal answer with annexes on the same administrative complaint filed by complainant; the copy itself of his formal answer; the letter of the Chief State Prosecutor to the Solicitor General relative to the Fabi case; and the decision dated October 3, 1994 of the Hon. Franklin Drilon, then DOJ Secretary, exonerating him on the same charges. (Page 5, Letter of the DOJ Secretary dated January 6, 1999)

After formal investigation, the case was submitted for decision.

In his letter-report to me dated January 6, 1999, the DOJ Secretary resolved to dismiss, for lack of basis, the charge of gross negligence and dereliction of duty, but found respondent liable for dishonesty and misconduct/conduct unbecoming of a public officer and recommended his dismissal from the service with forfeiture of benefits. The Secretary explained his findings as follows:

"Evaluating the complaint in the light of the evidence presented, we find that there is substantial evidence to impose disciplinary sanction against respondent prosecutor for dishonesty and conduct unbecoming of a public officer. His admission that he executed a certificate of service for the month of April 1993 in that he rendered full time service without absences albeit in the prosecution of Criminal Case No. 89-07-315 against Jesus Lazada, Jr., he stated, when required by the court to explain his absence from his court duty on April 27, 1993, that he was absent from the office in the morning of said date, confirms that he indeed committed dishonesty. While it is true that leave application submitted on a prescribed form for a half-day absence is not required, nevertheless, it behooves upon respondent prosecutor to inform his immediate supervisor of such absence and to reflect it on his certificate of service so that the corresponding deduction on his leave credits be effected. It must be emphasized that government prosecutors are not exempted to render not less than eight (8) hours of work a day for five (5) days a week as prescribed under the civil service law and rules. Thus, respondent prosecutor's act in deliberately certifying that he rendered full-time service on April 27, 1993 when in truth and in fact he was absent on the whole morning of said date, constitutes a clear case of dishonesty.

Likewise, respondent prosecutor's impudent admission that he inscribed profanities on his official copies of judicial documents, brazenly insisting that it is not the public's concern, vividly demonstrates his mental trait and behavior incompatible with the qualities required of a public servant. As borne out from the record, the subject document (Annex F-1* of the complaint) where respondent prosecutor made a notation of "S--t", which means "SHIT", is undoubtedly part of the official record in criminal case entitled "People of the Philippines vs. Frank Pelaez", then pending before the Metropolitan Trial Court of Tacloban City, Branch II. As a matter of fact, it is page 150 of the record of the said case. Respondent prosecutor's claim that it is his file copy and that he did not know how it came to be with the court is of no moment. Whether the subject document is his file copy or part of the judicial record, since it is an official document, respondent prosecutor has no authority to inscribe